

### III. Remarks

#### A. **Status of the Claims**

Claims 1-6, 8, 9 and 11-40 were pending in this application. Claims 1-6, 8, 9 and 11-40 were rejected for the reasons of record. Upon entry of this amendment, claims 16 and 25 will be amended.

Claims 16 and 25 have been amended such that the collar is positioned on the perimeter of the first sample processing device; and the second seal or gasket is located between the first sample processing device and the collar, positioned directly on the perimeter of the first sample processing device. Support for this amendment is found in the specification at least at page 13, lines 2-6, and in Figures 1-3.

Applicants acknowledge that the Office Action contends that Applicants' previous amendments were sufficient to overcome the anticipation rejection of U.S. Pat. No. 6,159,368 to *Moring et al.* as applied to claims 1-3, 5, 6, 8, 9 and 11-15.

The foregoing amendments should in no way be construed as acquiescence to any of the rejections set forth in the Final Office Action, and were made solely in an effort to expedite prosecution and allowance of the present application. Entry of the foregoing Amendment and Response is respectfully requested.

Applicants assert that *no new matter* has been added to the claims by these amendments.

Accordingly, upon entry of this amendment and response, claims 1-6, 8, 9 and 11 to 40 will be pending.

#### B. **Terminal Disclaimer and Non-statutory Obviousness Type Double Patenting Rejection**

Claims 1-6, 8, 9, 11-15, 23, 24 and 28-40 have been provisionally rejected under nonstatutory obviousness-type double patenting rejection as allegedly being unpatentable over claims 1 to 32 of U.S. Patent No. 7,588,728.

While in no way admitting that the present claims are obvious over claims 1 to 32 of U.S. Patent No. 7,588,728, Applicants have attached hereto a **Terminal Disclaimer** in compliance with 37 C.F.R. §1.321, which obviates this rejection.

#### C. **35 U.S.C. §102 Rejection**

Claims 16-22 and 25-27 are rejected as allegedly anticipated by U.S. Pat. No. 6,159,368 to *Moring et al.* (hereinafter "*Moring*"). *Applicants respectfully traverse.*

The standard for anticipation under 35 U.S.C. §102 requires that each and every element as set forth in the claim be found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir.1987). "The identical invention must be shown in as complete detail as is contained in the claims." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989).

Amended independent claim 16 recites in part:

“A method of applying vacuum to a manifold assembly, comprising...providing a manifold assembly...a base...a collar, a first sample processing device **having an outer perimeter wherein said collar is positioned directly on the outer perimeter of said first sample processing device...directly on the outer perimeter of said first sample processing device,** between said first sample processing device and said collar, wherein the collar comprises a skirt formed along a bottom periphery of a lateral wall such that the skirt positions over a peripheral portion of the base...”

Amended independent claim 25 recites in part:

“A manifold assembly comprising: a base; a collar having a top surface; a first seal between said collar and said base; a first sample processing device...**and having an outer perimeter wherein the top surface of said collar is positioned directly on the outer perimeter of said first sample processing device,** a second seal **positioned directly on the outer perimeter of said first sample processing device,** between said first sample processing device and the top surface of said collar, wherein the collar comprises a skirt formed along a bottom periphery of a lateral wall such that the skirt positions over a peripheral portion of the base...”

Applicants respectfully contend that *Moring* fails to disclose each and every element of the claims, and as such *Moring* fails to anticipate the invention as claimed. Accordingly, Applicants respectfully request that this rejection be reconsidered and withdrawn.

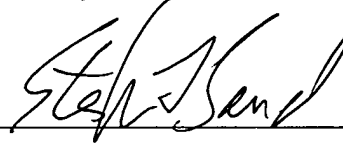
#### IV. Information Disclosure Statement

Applicants are submitting herewith an Information Disclosure Statement (IDS) for this application, and respectfully ask the Examiner consider the IDS, and the references cited therein, in reviewing this communication. The references cited in the Information Disclosure Statement all have been disclosed and/or cited in related applications: U.S. Patent Application Serial No. 10/780,463, filed February 17, 2004, now U.S. Patent No. 7,588,728; and Japanese application 2004-165357 related to the '728 patent.

V. Conclusion

Applicants believe that the above response is a complete response to the present office action, and that each of the above-referenced rejections have been obviated. Applicants respectfully request the reconsideration and withdrawal of the rejections, and the timely allowance of the pending claims. If however the Examiner believes that some requirement has been missed or not completely answered, the Examiner is invited to contact Applicants' attorney at the number below. Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account.

Respectfully submitted,

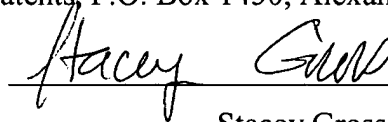


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The undersigned hereby certifies that this document is being placed in the United States mail with first-class postage attached, addressed to Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on **March 10, 2010**.



Stacey Gross